

*Andre R. Johnson v. The Kroger Co.
State Court of Fulton County, State of Georgia
Civil Action File Number: 23EV004834*

*Andre R. Johnson v. The Kroger Co.
USDC, Northern District, Atlanta Division
Civil Action File Number: TBA (Removal # 1:23-mi-99999)*

EXHIBIT A: PETITION FOR REMOVAL

PLAINTIFF'S DEMAND LETTER

Hotchkiss Law Firm LLC

185 E. Lake Ter. SE
Atlanta, GA 30317

Tel: (706) 424-1013
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Email: paul@hotchkisslawfirm.com

June 21, 2023

VIA CERTIFIED U.S. MAIL
RETURN RECEIPT REQUESTED
AND EMAIL

Wendy Donnelly
Sedgwick Claims Management Services, Inc.
P.O. Box 14452
Lexington, KY 40512
wendi.donnelly@sedgwick.com

Re: TIME-LIMITED SETTLEMENT DEMAND

Claim: 4A220202SBW-0001
Sedgwick Client: K011 Kroger East/Atlanta
Loss Date: 01/21/2021
Claimant: Andre Johnson

Dear Ms. Donnelly,

Thank you for taking the time last week to call me about this claim. While we appreciate your client's apparent desire to resolve this matter short of litigation, your client's \$3,000.00 settlement offer signifies a fundamental misunderstanding of the gravity of the subject pharmacy errors and, moreover, the harmful effects that these repeated errors (9 times) had on Andre Johnson—a teenager in his final years of high school at the time--over the course of an entire calendar year. Along with the following demand, please allow this letter to explain more directly why your client should take this claim seriously.

SETTLEMENT DEMAND

Andre Johnson and his mother, Giovanna Johnson, agree to settle all claims against The Kroger Co. and K011 Kroger East/Atlanta for **\$950,000.00** (Nine-Hundred Fifty- Thousand and 00/100 Dollars). This is a time-limited settlement demand made pursuant the Georgia Unliquidated Damages Interest Act, O.C.G.A. § 51-12-14. This demand shall remain open until **July 26, 2023, at 5:00 p.m.**, at which time, if not accepted, is irrevocably withdrawn.¹

¹ Should this matter fail to resolve prior to litigation, the Johnsons' initial demand following the filing of suit will increase to \$2 million.

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Upon acceptance of this demand at the time and in the manner set forth herein, Andre Johnson and his mother, Giovanna Johnson, agree to sign a mutually agreeable settlement and release of all claims. Additionally, the Johnsons will agree to lien protection on the condition that appropriate language that Andre is “not made whole” is contained in the release. If any additional settlement terms are desired, please request said terms in advance of acceptance of the settlement demand.

Acceptance of the above offer must be made by confirmation in writing on or before the time prescribed above. The writing should be sent to Hotchkiss Law Firm LLC, 185 E. Lake Ter. SE, Atlanta, Georgia 30317, and should be accompanied by a check made payable to “Andre Johnson and Hotchkiss Law Firm LLC.”

FACTUAL OVERVIEW

Andre Johnson was born with a rare genetic condition known as very long-chain acyl-CoA dehydrogenase deficiency (“VLCAD deficiency”). According to the National Institutes of Health:

VLCAD deficiency is a condition in which the body is unable to properly breakdown certain fats (called very long-chain fatty acids) into energy, particularly during periods without food (fasting). Signs and symptoms may include low blood sugar (hypoglycemia), lack of energy, and muscle weakness. Children affected by the most severe forms of the condition are also at risk of complications such as liver abnormalities and heart problems.

Andre was diagnosed with VLCAD deficiency as an infant and began a daily regimen of Levocarnitine to protect against VLCAD-deficiency-related liver, heart, and muscle problems. Persons with untreated VLCAD deficiency can suffer an array of serious complications, including rhabdomyolysis, hypoglycemia, low energy, general muscle weakness, liver damage, and heart problems. From the time of Andre’s infancy until January 6, 2021, when he was then 16 years old, Andre’s mother routinely filled Andre’s Levocarnitine prescription at the Kroger Pharmacy on located at 12460 Crabapple Road in Alpharetta, Georgia.

On January 6, 2021, and on 9 separate occasions thereafter, Kroger Pharmacy inexplicably dispensed to the Johnsons Levetiracetam instead of Levocarnitine. Levetiracetam (brand name: Keppra) is an anticonvulsant drug used to treat seizures. Andre does not have epilepsy, does not have any history of seizures, and has never had a prescription for Levetiracetam (Keppra).

As a result of Kroger Pharmacy’s repeated filling and dispensing errors, Andre was not only deprived of necessary treatment for his VLCAD deficiency for more than an entire year but also given an unnecessary medication that had its own set of detrimental side effects, including unusual tiredness and weakness, fever, headache, hair loss, and a difficult withdrawal period. Notably, Kroger’s errors were not discovered by Kroger but rather by Andre’s long-time treating geneticist, Frances Kendall, M.D., when Kroger faxed her a refill request for Keppra and she investigated.

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Throughout the entire course of 2021—the period throughout which the subject pharmacy errors occurred—Andre suffered from the combined consequences of untreated VLCAD deficiency and the side effects of Keppra.

Dr. Kendall's records and various lab results, as well as photos of Andre's Keppra-caused hair loss, are available to view and/or download at:

<https://www.dropbox.com/sh/hc4pr7kgobdvpjv/AABHWW19HrvSpQJz6mZ5WVuUa?dl=0>

As you can read for yourself, Dr. Kendall is crystal clear that she assigns the blame for Andre's year-long course of troubling medical issues and symptoms directly upon Kroger Pharmacy's series of prescription errors, which all could and should have been avoided had Kroger Pharmacy staff followed proper protocol. The "highlights" of these year-long medical issues and symptoms include but are not limited to:

- Four major episodes of rhabdomyolysis;
- Left ventricular wall hypertrophy with diminished ventricular septal tissue;
- Chronic fatigue;
- Slurred speech;
- "Profound" elevations of CPK levels;
- Elevated ALT and AST enzymes (often indicating inflammation or damage to cells in the liver, kidneys, and/or heart);
- Hair loss (*see* provided photos); and
- Keppra withdrawal symptoms (including headaches and vomiting x 1 week).

Again, Dr. Kendall's records make clear that Andre's issues and symptoms over the course of 2021 were directly related to his failure to take Levocarnitine (as prescribed), his taking of Keppra (not prescribed), or both:

In retrospect, Andre reports that shortly after starting Keppra he began to develop more fatigue, hair loss, slurred speech and had 3-4 episodes of rhabdomyolysis with more profound elevations of CPK levels compared to recent past. When the Keppra was discontinued in February 2022 Andre experienced acute onset of headaches and vomiting that resolved over the course of one week. Since the re-introduction of his carnitine, he reports more energy and less fatigue. Laboratory studies obtained in March 2021 compared to March 2022, show a reduction in long chain metabolites on

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acylcarnitine profile, increased carnitine levels and reduced CPK. A recent follow-up repeat echo cardiogram noted some left ventricular wall hypertrophy with normal cardiac functioning. Dr. Sallee, Andre's long time cardiology suspects the left ventricular wall hypertrophy development is secondary to his provision of Keppra instead of L-carnitine for the past year.

During our follow-up we discussed the inadvertent discontinuation of his carnitine and introduction of Keppra. Certainly, his general increased metabolic instability and detection of LV wall hypertrophy could be linked to his lack of carnitine therapy. His hair loss upon introduction of Keppra and withdrawal symptoms of headaches and vomiting with its cessation appear to be directly linked to this medication's usage. Since Andre has now been on carnitine again for one month, we will repeat his labs now and again in several months to make certain they are stabilizing.

See Kendall's March 16, 2022 Note.

Also, please note that but for the then-ongoing COVID-19 pandemic, Andre would have sought hospital attention for his episodes of rhabdomyolysis. However, because of the pandemic and the increased risks to persons with VLCAD associated with COVID, Andre was treated at home with aggressive hydration therapy at the advice of Dr. Kendall.

While it may be Kroger's position that Andre suffered no "real" damages because of a shortage of related medical specials, one can presume that a Fulton County jury would strongly disagree. Even if Andre's hair regrows fully, his heart hypertrophy resolves, and if his liver and kidneys escaped lasting damage—all of which are yet to be determined—Kroger Pharmacy's series of medication errors effectively robbed him of a year of his young life during his formative high school years. Andre, who is now enrolled at Georgia State University, is still dealing with his hair loss, his new-onset cardiac condition, and potential lasting injuries to his liver and kidneys, all of which are continuing consequences of Kroger Pharmacy's negligence.

* * *

This demand is made in good faith to resolve this matter expeditiously, for the benefit of all parties. I am available to discuss this matter over the phone, if you feel that further discussion would be helpful. Otherwise, we shall await your reply.

Sincerely,



Paul I. Hotchkiss

Cc: Andre Johnson (via email)
Giovanna Johnson (via email)